



BERMUDA

CONSUMER PROTECTION AMENDMENT ACT 2011

2011 : 15

WHEREAS it is expedient to amend the Consumer Protection Act 1999;

Be it enacted by The Queen's Most Excellent Majesty, by and with the advice and consent of the Senate and the House of Assembly of Bermuda, and by the authority of the same, as follows:

Citation

1 This Act, which amends the Consumer Protection Act 1999 (the "principal Act") may be cited as the Consumer Protection Amendment Act 2011.

Amends section 11

2 Section 11 of the principal Act is amended—

- (a) by renumbering the section as subsection (1);
- (b) in paragraph (b)—
  - (i) by deleting the word "ignorance," in subparagraph (i) and substituting the words "mental disorder or impairment, age,";
  - (ii) by inserting, in subparagraph (ii) after the word "that", the words "the price to be charged will grossly exceed the estimated or quoted price, or that"; and
  - (iii) by deleting the full stop in subparagraph (ix) and substituting "; and";
- (c) by inserting after paragraph (b) the following—
  - "(c) an unconscionable act in respect of a particular transaction and, in determining whether or not an act is unconscionable, there may be taken into account that the person is—

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- (i) engaging in abusive language, or verbal or physical threats directed towards the consumer;
  - (ii) withholding from the consumer material information, or providing material information in terms which cannot be understood by the consumer; and in particular, where the person knows or ought to know that the consumer is not reasonably able to protect his interests because of his physical infirmity, mental disorder or impairment, age, illiteracy, or inability to understand the language or similar factors;
  - (iii) supplying and charging the consumer for consumer goods and services which were not part of the transaction without first obtaining the agreement of the consumer;
  - (iv) failing to make a full refund (or an appropriate refund) within 30 days from the date the consumer requested a refund, in circumstances where the person failed to supply or substantially supply goods or services under the terms and conditions of the transaction;
  - (v) placing a lien on property belonging to the consumer for the purpose of inducing the consumer to pay for the unauthorized supply of goods or services, either at the time the goods or services are supplied or at a later date.”; and
- (d) by inserting after subsection (1) the following—

“(2) For the purpose of this section—

“estimate” means a representation, whether written or oral, indicating the likely price that will be charged in respect of consumer goods or services;

“quote” means a written and signed representation setting out the actual price that will be charged in respect of consumer goods or services.”.

Amends section 12

3 Section 12 of the principal Act is amended—

- (a) by repealing and replacing subsection (2) with the following—

“(2) A person who makes, under section 11, a consumer representation or performs any act shall be deemed to be engaging in an unfair business practice.”; and

- (b) by inserting the following after subsection (3)—

“(4) Where a person is found guilty of engaging in an unfair business practice the court may, in addition to imposing a penalty under subsection (3),

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make an order for the payment of compensation for the loss suffered by the consumer.

(5) Notwithstanding subsection (3), a person shall not be charged with an offence of unfair business practice under this section where such person—

- (a) agrees to attempts made by the Executive Officer to effectively settle a complaint of unfair business practice as provided in section 6(4)(a);
- (b) complies with an order issued by the Executive Officer for the person to cease engaging in an unfair business practice as provided in section 14; or
- (c) complies with a written assurance of voluntary compliance under section 17.”.

Amends section 13

4 Section 13 of the principal Act is amended—

(a) by repealing and replacing subsection (1) with the following—

“(1) Where a person induces a consumer to enter into an agreement, whether written, oral or implied, by an unfair business practice, the consumer may, subject to subsection (2), rescind the agreement and is entitled to any remedy that is available at law, including damages.”;

(b) in subsection (3) by inserting after “11(b)” the words “or (c)”;

(c) in subsection (4) by deleting “makes the consumer representation” and substituting “engages in an unfair business practice”; and

(d) by repealing and replacing subsection (7) with the following—

“(7) A consumer may, within six months after the agreement referred to in subsection (1) is entered into, claim a remedy conferred by subsection (1) by giving notice of the claim in writing to the person who induced the consumer to enter into the agreement.”.

[Assent Date: 3 June 2011]

[Operative Date: 3 June 2011]